



Government and Contractor Employee Interaction:

***Appropriate and Effective Interaction with Our AFSPC Mission
Partners***



Overview

- **Introduction**
 - Why We're Learning This, The Facts, The Rules, and The Risks
- **The Basics**
 - Personal/Non-Personal Services, Inherently Governmental, Contractor IDs
- **Theory Meets Practice: Specific Situations**
 - Protecting Sensitive Information
 - Employee morale, Gifts, Travel, Rewards, Reservists
 - Specific Scenarios
- **Conflict of Interest**
- **Do's and Don'ts**



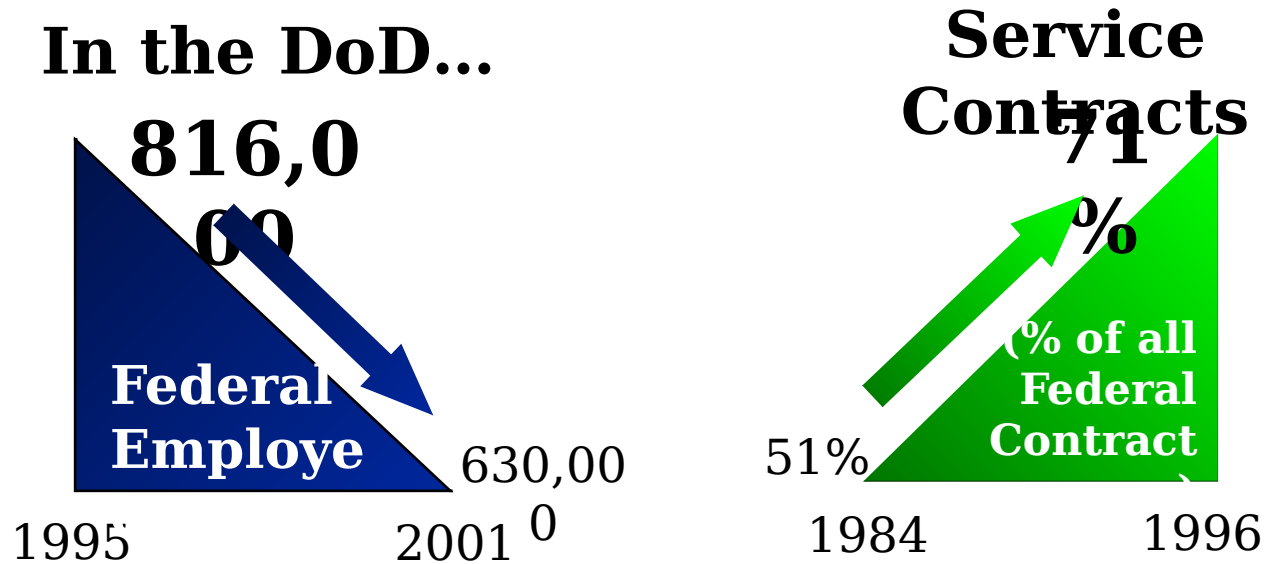
Introduction

Introduction (What and Why)



What has changed?

Contractor employees have become a large part of the DoD mission



Many of these positions were outsourced to private companies at a lower cost.

Contractors have become our mission partners.



What has changed?

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World War II

- *most services were performed by Government personnel*

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Vietnam through Gulf War

- *Government saved resources and funds by contracting out non-essential functions*

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Afghanistan and Iraq - Global War on Terrorism (GWOT)

- *Government stands “shoulder-to-shoulder with Contractor personnel” (Deidre Lee, April 2004)*



Facts, Rules and Risks

- **FACT: The Federal Government is reliant on support contractors - and for more than just administrative or technical support.**
- **FACT: For mission success, government employees must understand the government/contractor relationship.**
- **Government employees must understand the rules and recognize that risks.**

This presentation aims to mitigate the risks by providing government employees an understanding of the laws and rules in the government-contractor relationship.




Facts, Rules and Risks

- Government, including uniformed, civilian and contractor personnel, are “all on a team” providing the unique mission support to defend this nation.
- However, different standards apply to the various members of the team. These are the rules for government employees:
 - “Each [government] employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the federal government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.” [
5 CFR 2635.101: DOD 5500.7-R, Chapter 2, Section 2-100 – also known as the Joint Ethics Regulation]

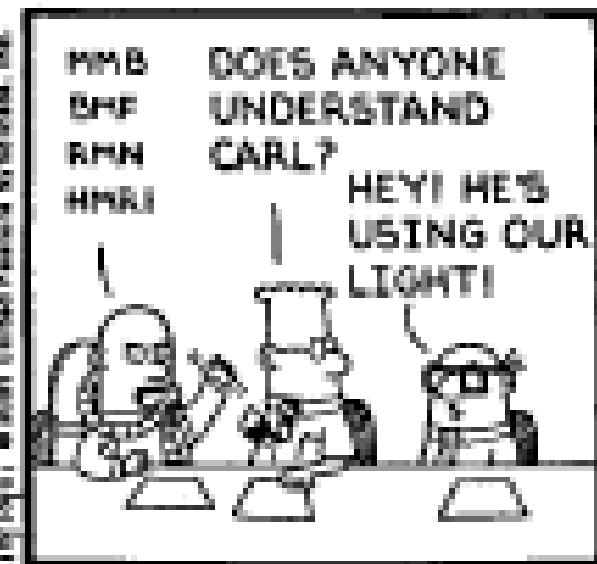


Facts, Rules and Risks

- **Inappropriate gov't/contractor relationships may cause:**
 - **Contractors to “over-offer” in order to generate business**
 - **Government employee to inadvertently commit the Government**
 - **Embarrassment to Commands during a ratification**
 - **Legal implications, to include lawsuits**
 - **IMPACT TO MISSION resulting from misused funds and wasted resources on ratifications or disciplinary action**
- **p.s. This symbol  in this presentation denotes a key point**
- **Uniformed and civil service employees must keep an “arms length” relationship with contractor employees.**
- ***The APPEARANCE of inappropriate behavior is the same as the behavior itself. Perception can be reality.***



The Basics





Personal vs. Non-Personal Services

- What are “Personal Services”?
 - Per FAR 37.104 *Personal services contracts are characterized by the employer-employee relationship* created between the Government and the contractor's personnel.
 - Obtaining personal services by contract, rather than by direct civilian or military hire, circumvents the personnel laws and is subject to stringent limitations.
- What are “Non-Personal Services”?
 - A non-personal services contract is a contract under which the personnel providing the services are not subject to the supervision and control usually prevailing in relationships between the government and its employees. The company, not the individual, is hired to perform.



Personal vs. Non-Personal Services

- What's the difference?
 - The difference between government employees and contractor personnel is **control**. Under a non-personal services contract, a contractor – not the government customer – directs its employees and dictates its employees' compensation, benefits and rewards.
 - “Control” is the means and manner of a worker's performance, extent of supervision and direction, type of work and skills required, and compensation.
- ***The government hires a contractor for the work products, not for the individual contractor employee.***



Inherently Governmental Functions

- Only government officials can legally perform **“inherently governmental functions”**, which are defined as:
 - Functions that are so intimately related to public interest as to mandate performance by government employees, such as:
 - Direction/control of federal employees
 - Determination of budget policy, guidance and strategy
 - Resource allocation or program management duties
 - Approval of contractual documents or administering contracts
 - Obligating Congressional authorized funding



Who's Who in the Workplace: Contractor ID

Contractor identification is key to avoiding problems



Contractor personnel must wear obvious identification. Nearly all service contracts specifically require contractor personnel to wear conspicuous badges. ***If you don't know, ASK!***

Identify contractors in telephone conversations, meetings and all written correspondence, including e-mail (per *AFI 33-119, paragraph 5.3*).

Many contractor personnel are retired military/civil service employees.

Both government employees and contractors must realize their professional relationship has changed - especially when dealing with sensitive or "FOUO" information.



Contractor Identification

- **Unidentified contractors increase risk of:**
 - Unauthorized advance release of procurement information - giving unfair advantage to one or more contractors
 - Disclosure of source selection information, such as source selection plans, evaluation factors, exact funding amounts, proposals, and proposal evaluations
 - Conversion to improper personal services contracts where contractor personnel are managed as though they are government employees
 - Risk of unauthorized work direction (mistaken for Gov't employee)
 - Performance of inherently governmental functions by contractors, such as
 - Program Element Monitor (PEM) duties,
 - Program Management duties, and
 - other resource allocation and/or decision-making



Why It's Important To You

- **Administrative sanctions**



- **Civil sanctions**



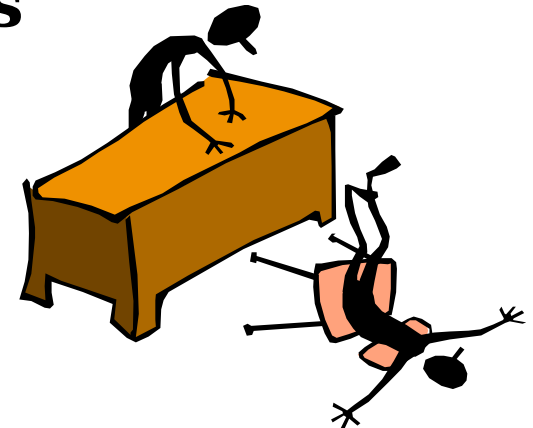
- **Criminal sanctions**





Ramifications That May Be Triggered

- **Misuse of Appropriations** (Anti-deficiency Act violations)
- **Trade Secrets Act Violations**
- **Procurement Integrity Act Violations**
- **Standards of Conduct Violations**
 - Conflicts of Interest
 - Gift rules
 - Preferential treatment
 - Unauthorized commitments
 - Endorsements
 - Preserve and protect government property/resources





Theory Meets Practice (and other day-to-day situations)



Protecting Sensitive Information

- **Because contractor personnel have access to our offices, we must protect sensitive information.**
 - Hallways, bathrooms, cafeterias, break rooms and even the “cube farm” are not secure areas for discussing sensitive information
 - Know who is in the room when discussing sensitive information (including meetings)
- **Before providing information to a contractor to develop visual aids, create a database, provide consultations, or even repair the hard drive on our computer, we must ensure that the contractor is authorized access to the information**
- **The results of unauthorized disclosure include:**
 - Causing a competitive advantage, risking protests and/or possible subsequent litigation
 - Violations of the Procurement Integrity Act [41 USC 423] and the Trade Secrets Act [18 USC 1905] leading to criminal prosecution





Protecting Sensitive Information

- DoD policy identifies information that is not releasable, including:
 - Classified information
 - Planning, Programming, Budgeting and Execution (PPBE) information
 - Contractor proprietary information
 - Unsolicited proposal information
 - Internal agency communications
 - Source selection information, and
 - Information that would create an unfair competitive advantage



Protecting Sensitive Information

Guidelines for Protecting Sensitive Information

1. When you are in a **meeting** in which advanced acquisition or sensitive information is to be discussed, ensure you **know** who **the participants** are. If in doubt, ask!
2. Do not discuss sensitive information in **areas that are not secure** (e.g., bathrooms, hallways, cafeterias). Do not leave sensitive information where contractor personnel may observe it (i.e., your desk or work area).
3. **Proprietary information is releasable** to a contractor **only if** protected by appropriate contract clauses and non-disclosure agreements.
4. Do not place contractor personnel in a **position of liability for property** over which they have no contractual authority, accountability or control.
5. Do not delegate responsibility for **end-of-day security checks** to contractor personnel (unless their contract specifically allows it).
6. Consult your **legal counsel** if you have questions about releasing sensitive information. An attorney's advice is confidential and privileged.



Theory Meets Practice: Specific Situations



Specific Situations

1. Inclement Weather Dismissals

- Government does not determine contractor leave policy
- Government generally does not compensate contractor for non-performance
- Contracting Officer will refer to the contract terms and conditions that address government down time

2. Combined Federal Campaign

- Cannot solicit contractor employees directly or indirectly
- May accept voluntary contributions of checks made to CFC
- Performing as CFC rep--is it in the contract?



Specific Situations

3. Birthday clubs & gift exchanges

- Cannot solicit
- No cash or investments
- Gift rules apply

4. Use of Air Force Seal

- Contractors may NOT use Agency Name, Seal or any “colorable imitation of such words, initials in seals” in connection with merchandise, retail products, impersonation, solicitation, or commercial activity if reasonably calculated to convey impression that such use is approved, endorsed, or authorized (10 USC 445).





Specific Situations

5. Activated Reservists in AFSPC may be contractors in their civilian life.

- It is important to ensure that reservists do not have a conflict of interest between their reserve duty and their civilian careers (with defense contractors, for example). Be aware that having a reservist work on FOUO or sensitive projects or information may not only be a risk to the government, but puts the reservists in a personal CoI situation.



Assignment of Reservists

- **A reservist may not be assigned to duties involving access to:**
 - **Information that would help his or her private employer in an ongoing or future source selection, OR**
 - **Proprietary or confidential information about the competitors of his or her private employer. [JER para. 5-408]**



Assignment of Reservists

Problem Avoidance

- **Commanders have an affirmative obligation** under the JER § 5-408 to refrain from assigning reservists to perform duties that could enable them to obtain non-public information or gain unfair advantage over competitors, or which present an actual or apparent conflict of interest.
 - **Commanders must screen reservists** to ensure that no actual or apparent conflict exists between their private interests and their duty assignment.
 - **Reservists** have an affirmative obligation to **disclose material** facts in this regard. However, receiving commands cannot assume compliance and must independently screen incoming personnel to avoid conflicts of interest.
- Accomplish “screening document” with **review annually**/on change of circumstances; constant surveillance



Assignment of Reservists

Problem Avoidance

- **Screening document should include (at minimum):**
 - **Civilian employer** of the reservist, location, job title, phone number;
 - **Duties and responsibilities** of the reservist with his/her civilian employer;
 - **Government contracts held** by the reservists civilian employer, as well as any pending or potential contracts;
 - **Reserve assignment** and job responsibilities (include office symbol);
 - Whether the reservist is being **mobilized or involuntarily** ordered to active duty;
 - Whether the reservist will be performing **duty relating to contractual actions** (and, if so, the nature of the duty); and
 - The reservist's **supervisor's name**, date and an affirmative (signed) statement that a conflict of interest analysis has been performed.



Assignment of Reservists

Disclosure of Non-Public Information

- **Federal employees, including reservists, may not disclose non-public information:**
 - **To further their own private interests, OR**
 - **To further the private interests of another (such as their private employer). [5 CFR 2635.703]**
- **“Non-public information” means information the employee gains by reason of Federal employment, and that he or she knows (or reasonably should know) has not been made available to the general public.**



Specific Situations

Bottom Line:

**Be aware of whom sensitive
information is sent to!**



Specific Situations: Scenario #1

Situation:

Bill is a retired GS-12. He now is a contractor employee working for ACME Engineering Services in support of an AFSPC A1 mission system. The A1 mission system team includes 100 active-duty and civilian personnel, and 15 support contractors. Each quarter the entire team has an afternoon off-site or picnic to build team unity and morale.

Question:

As a member of the A1 Program team, can Bill attend the picnic?

Answer:



Specific Situations: Scenario #1

- **No, Bill cannot normally attend the picnic.**
 - It is up to Bill's employer, ACME Engineering, to decide whether Bill can have the afternoon off to attend the picnic.
 - Government officials are not authorized to grant "administrative leave" or expend government resources to compensate contractor personnel to attend government-sanctioned morale building activities (e.g., picnics, golf outings, holiday parties, sports day events, fitness time).

Bottom Line: The morale of the contractor employees is the responsibility of the contractor.



Specific Situations: Scenario #2

Situation:

Margaret works for ACME Telecommunications and serves as a technical advisor on and Advisory and Assistance (A&AS) Contract in AFSPC/MS. Margaret also was an NCAA Volleyball player at UMASS. The Peterson AFB Sports Day is in two weeks and MS could really use Margaret on their co-ed volleyball team.

Question:

Could Margaret play for the MS Volleyball squad at Sports Day?

Answer:



Specific Situations: Scenario #2

- **No. Like Bill, Margaret cannot participate in morale building activities.**
 - Margaret's employer, ACME Engineering, not the government, may decide whether she can participate.



Specific Situations: Scenario #3

Situation:

Dr. X Consulting and Engineering Services offers to provide free consulting services to support the requirements development of the AFSPC Potato Launcher (PL1) program. The company VP offers to provide two weeks consulting services from his “top people” to support the PL1 Program Manager.

Question

Can ~~the~~  program manager accept the service?

Answer:



Specific Situations: Scenario #3



- **No. Accepting a free service constitutes a violation of the law against accepting voluntary services (31 USC 1342) except under limited authority (10 USC 1588)**
- **When H&R Block offers to check your old tax returns for free...they are looking for influence - just like Dr. X.**



Scenario #4

Situation

Mary works for ABC Command Support. She has been doing an outstanding job in her position with ABC. As the government employee she supports, you want to recognize her for her above and beyond performance.

Question:

Can ~~you~~  give her a “Letter of Appreciation”?

Answer:



Rewards and Recognition of Contractors

- **No, you cannot give Mary a letter of appreciation.**
- **DoD policy is to not recognize or endorse private citizens or private entities that have a commercial or profit-making relationship with the Department, unless the contribution is substantially beyond that specified in the contract (**
DOD Manual 1400.25 and AFI 36-1004, paragraph 1.9)
 - It's the contractor's duty to incentivize its employees and to increase morale and productivity. Any awards for good performance must be tied to the contract, approved by the government program manager and Contracting Officer, and sent to the contractor, not the contractor employee.
- **Providing recognition of performance may be counter to the overall performance of the contract - other areas may be less than stellar.**



Contractor Travel in Government Vehicles

- **Unless specified in the contract, contractor personnel are not allowed to use government vehicles**
 - **Exception (FAR 45.102 & 45.304) only if:**
 - **number of vehicles required is predictable and constant**
 - **proposed contract will bear entire cost of vehicle program**
 - **vehicles will be used only on specific contract approved**
 - **prospective contractors do not or would not be expected to have existing and continuing capability to provide vehicles from their own resources**
 - **substantial savings are expected**
- **Contractor may use shuttle bus between installations**
- **Contractor may be a passenger in GOV**
 - *if no appearance of favoritism*
- **Government may issue letter that contractor is performing government business IAW JTR/FTR**
- **GOVERNMENT EMPLOYEES MAY NOT RIDE IN CONTRACTOR VEHICLES EXCEPT IN VERY LIMITED CIRCUMSTANCES!**



Conflict of Interest (CoI)



Contractor Organizational CoI

Cannot award a contract to a contractor that:

- **May be unable to render impartial assistance/advice**
- **Has potential future gain or past involvement in a program, such as:**
 - Drafting Statements of Work
 - Evaluation of competitor's offers
 - Access to Government info not available to others (source selection info)
 - Access to competitor info obtained performing a Gov't contract (proprietary data)
 - Any other access that creates a competitive advantage

Bottom Line: We must prevent the existence of conflicting roles that may bias a contractor's judgment

Mitigation may include prohibition from bidding



Government Employee CoI

RULE: *You cannot make decisions, give advice, or make recommendations pertaining to any matter IF you (or those imputed to you) have a **financial interest***

IMPUTED to YOU:

- Spouse, Minor children, Members of household, Prospective employers
- Organizations
 - IF you currently or w/n past year served as employee, trustee, partner, consultant, or employee
 - ~~active participant~~

FINANCIAL INTEREST includes:

Seeking or negotiating for non-federal employment

Working for associated profit or non-profit entities

Outside job/business activities

Ownership in a company

Investments, stocks, bonds--exception if: < \$15,000; < \$50,000 in sector; Independently managed, widely-diversified (i.e. Mutual



Conflicts Of Interest: Remedial Actions

- **Contractor:**
 - **Disqualification from Acquisition**

- **Government Employee:**
 - **Divestiture of company stock**
 - **Waiver (after Determination)**
 - **Reassignment or Transfer to other program**
 - **Resignation from outside position if “moonlighting”***

***Other restrictions also apply, seek advice from ethics counselor**



The Do's and Don'ts



Do's

1. Remember: Contractor personnel are **not government employees** – different rules apply.
2. Ensure contractor personnel wear distinctive badges and can be **easily identified** - including E-mail correspondence and on the telephone.
3. **Respect the employer-employee relationship** between contractors and their employees.
4. **Protect intellectual property rights** when contractor work products are created or shared in the federal workplace.
5. **Identify possible conflicts** by contractor personnel to include violations of the law (including but not limited to Procurement Integrity statutes and regulations). Be sensitive to inappropriate appearances created by close relationships between government employees and contractor personnel.
6. As necessary, **seek assistance from legal counsel** in resolving these inappropriate relationships.



Do's

7. **Safeguard sensitive information**, including proprietary, Privacy Act and source selection information.
8. Clearly describe all contract taskings and ensure they are **in-scope**.
9. **Maintain contact with on-site contractor personnel** in order to assess performance and ascertain progress or delivery status. In an IPT environment, closer working relationships are needed; however, be careful to ensure only the contractor's task leader assigns taskings to individual contractor personnel.
10. **"Zoom out"** - Look at your situation from the contractor and contractor employee perspective.
 - Are you putting the employee in a **difficult situation** by asking for performance above or outside the contract?
 - Does your interaction with contractor personnel give the **perception** of favoritism?
11. Be aware of **foreign disclosure limitations**, including when working with our international partners (there are some things that a contractor cannot disclose to a foreign national, including members of Canadian Air Force working in the building, without a license).



Don'ts

1. Don't become involved in the **operations and policies of the contractor** such as:
 - (a) Selecting, recruiting, hiring or firing contractor personnel
 - (b) Directing, scheduling, or critiquing individual contractor tasks on a continuous basis
 - (c) Supervising contractor personnel
 - (d) Pressuring the contractor to use "favorite" personnel, or insisting on particular personnel actions
2. Don't use government and contractor personnel **interchangeably**.
3. Don't require **"out of scope" work, personal services, or "inherently governmental functions."** - there are no "and other duties as assigned"
4. Don't give the incumbent contractor **unfair competitive advantage** by including its personnel in meetings to discuss aspects of the re-competition, or by allowing access to planning information.
5. Don't **solicit or accept gifts** from contractor personnel (other than coffee, small food items, etc. IAW Ethics Regulations).





Don'ts

6. Do not encourage contractor personnel to leave their workplace to attend a morale building activity, ask them to volunteer to organize morale building events, or participate in office gift-giving, funds, etc.
7. Do not give only one contractor AUTHORIZED/LEGALLY RELEASABLE information that may be of commercial value. If you share it with one, you must share it with all.





Being familiar with the information in this briefing will help you to maintain appropriate relationships with contractor employees. If you find yourself in a situation that is not addressed or you have any doubt as to how to handle a contracting situation, contact contracting activity or HQ AFSPC/JAQ at DSN 692-3916 and ask for clarification



QUESTIONS?



This briefing may be accessed on the AFSPC/MSK website:

[*http://www.peterson.af.mil/hqafspc/contracting/*](http://www.peterson.af.mil/hqafspc/contracting/)



Resources

- **The Defense Acquisition University (DAU) has created an on-line course entitled “Ethics in the Era of Partnering.”**
- *This guidance is not a substitute for ethics and legal advice. If you have questions or need advice about a specific situation, you should always consult your legal counsel.*



Thanks to...

This presentation and the associated materials were developed from a compilation of information gathered from various sources within the Department of Defense.
CONTRIBUTORS

WR-ALC/JA and WR-ALC/PK, Enhancing Relations with Support Contractors,
undated Briefing

AFMC Contracting Guide For The Government- Contractor Relationship

AFMC Contracting (AFMC/PK) Guide to Government-Contractor Relations

Susan J. Harvey, Service Contract Management; No Place For Amateurs,
Program Management Magazine, Jan-Feb 02, pp56-7

Department of Defense, Ethics Issues in Government-Contractor Teambuilding,
15 Jul 99

AFSPC/JA Government-Contractor Interactions.



Additional Resources

5 CFR 2635.101	<i>Standards of Ethical Conduct for Employees of the Executive Branch</i>	
	Basic Obligation of Public Service	
5 CFR 2635.203	Definitions regarding gifts	
5 CFR 2635.204	Exceptions to general ban on gifts	
5 CFR 2635.703	Use of Nonpublic Information	
5 CFR 2635.704	Use of Government Property	
5 CFR 2635 Subpart B	Gifts from Outside Sources	
5 USC Subpart C	Awards for Superior Accomplishments	
5 USC 3109	Employment of Experts and Consultants	
5 USC 4111	Acceptance of Contributions, Awards and Other Payments	
5 USC 7342	Receipt and Distribution of Foreign Gifts and Decorations	
10 USC Chapter 857	Decorations and Awards	
10 USC 2601	General Gift Funds	
18 USC 1905	Disclosure of Confidential Information Generally	
26 USC 501	Exemption from Tax on Corporations, Certain Trusts, etc.	
28 USC 1346	United States as Defendant	
28 USC 2671	Definitions	
29 USC Chapter 15	Occupational Safety and Health	
29 USC 652	Definitions	
29 USC 654	Duties of Employers and Employees	
31 USC 1301(a)	The Purpose Statute	
31 USC 1344(a)	Passenger Carrier Use	
31 USC 1353	Acceptance of Travel and Related Expenses from Non-Federal Sources	
31 USC 3729	False Claims	
41 USC 423	Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information (referred as the Procurement Integrity Law)	or Source Selection Information
FAR	Federal Acquisition Regulation	
JER	Joint Ethics Regulation	
OGE "Letter to a Private Organization"	Office of Government Ethics	
DODR 5500.7-R	Joint Ethics Regulation	